

# EXHIBIT

# 5

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**  
ROBERT SAMPSON, : 22-cv-04490-JMA-AYS  
: :  
Plaintiff, : :  
: :  
- versus - : U.S. Courthouse  
: Central Islip, New York  
STONY BROOK UNIVERSITY, ET AL, :  
: June 13, 2023  
Defendants :  
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TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE JOAN M. AZRACK  
UNITED STATES DISTRICT JUDGE

**A P P E A R A N C E S:**  
(VIA VIDEO/AUDIO)

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1 THE DEPUTY: Calling cv-22-4490, *Sampson v.*  
2 *Stony Brook University.*

3 Counsel, state your appearances for the record,  
4 please.

5 MS. VARGAS: Thank you. This is Mary Vargas  
6 for the plaintiff.

7 MS. LYNCH: This is Helena Lynch with the  
8 Attorney General's Office for defendant.

9 MR. WEINER: And also this is Charles Weiner,  
10 co-counseling for the plaintiff.

11 THE DEPUTY: Okay.

12 MS. LYNCH: Pardon me, I didn't mean to jump  
13 in.

14 THE COURT: All right.

15 MR. WEINER: No worries.

16 THE COURT: Judge Azrack will call in in a  
17 moment.

18 (Pause in proceedings)

19 THE COURT: Hi. I'm sorry you had to wait a  
20 sec. This is Judge Azrack. We have Ms. Vargas and Mr.  
21 Weiner?

22 MS. VARGAS: Good afternoon, your Honor.

23 THE COURT: And Ms. Lynch?

24 MR. WEINER: Good afternoon, your Honor.

25 THE COURT: Yes?

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1 MS. LYNCH: Yes, your Honor. Good afternoon.

2 THE COURT: Good afternoon. Okay. Talk to me.

3 MS. VARGAS: Your Honor, this is Mary Vargas.

4 From the plaintiff's perspective, his step 1 scores are

5 imminent, likely to be received possibly as soon as

6 tomorrow. There remain a few issues for resolution

7 between the parties and it's the plaintiff's position

8 that these issues would be best addressed via mediation.

9 Specifically, Mr. Sampson needs to take a step

10 2 which the NBME has now agreed to provide accommodations

11 for. He understands that needs to happen in October, but

12 we don't have commitment from defense on that. We need

13 to have a conversation about when he would enter

14 residency match and what the dean's letter, which is part

15 of the residency match, would say about this litigation

16 and the time it took him to complete medical school as

17 well as an outstanding claim for attorneys fees. Mr.

18 Sampson has had to pay out of pocket in order to maintain

19 his status in medical school for attorneys fees and we'd

20 like to address that issue in mediation, or absent

21 mediation, via a briefing schedule and a fee petition.

22 THE COURT: Okay. Ms. Lynch? I mean let me

23 say I would be in favor of you trying to mediate these

24 issues at least in the near term, but let me hear from

25 Ms. Lynch.

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1 MS. LYNCH: Yes. Your Honor, our position is  
2 that this litigation is resolved. We had a stipulation  
3 in place and I re-circulated it a week or so ago.

4 THE COURT: Yes.

5 MS. LYNCH: It has all the terms that we've  
6 agreed on and, you know, in the boilerplate settlement  
7 language. And counsel for the plaintiff introduced this  
8 idea of mediation on outstanding issues. We just don't  
9 see any outstanding issues so we thought that we had no  
10 option but to submit a pre-motion letter so that we can  
11 move on mootness for the PI motion and, you know, on the  
12 merits for the damages, sorry, declaratory judgment part.

13 So I think that everything that plaintiffs are  
14 talking about is outside the scope of this litigation  
15 that's before the Court.

16 THE COURT: Just give me one second. Do you  
17 say you put in a pre-motion letter?

18 MS. LYNCH: No. In discussions with counsel,  
19 we told them that -- I'm sorry, I told them that was our  
20 plan. And then they suggested coming before your Honor  
21 and I agreed to that. So we didn't put in a letter.

22 THE COURT: All right. Okay. I was concerned  
23 that I missed something. I mean I'm looking at the  
24 stipulation, it said three provisions. So yes, this was  
25 the stipulation, Ms. Vargas. This was it.

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1 MS. VARGAS: Your Honor --

2 THE COURT: And I said my view was you could  
3 brief the issue of fees and costs. Even though the  
4 stipulation said it does not include fees, did not  
5 preclude you from briefing that issue. But otherwise, I  
6 thought it resolved it.

7 MS. VARGAS: Your Honor, we would welcome the  
8 opportunity to brief the fee issue. In order for Mr.  
9 Sampson to return to school in good status, we understood  
10 from the Attorney General's office, from the draft it  
11 circulated, that it was looking to have him comply with  
12 policies. And while Mr. Sampson certainly does not  
13 disagree with that requirement, he doesn't actually fit  
14 into the policies because of the time that's passed while  
15 we've been involved in this litigation. So he wants to  
16 make sure that he can do everything that the medical  
17 school expects of him.

18 And in order to understand what that is, you  
19 know, we've attempted to raise some of those issues with  
20 the Attorney General's office, but I think we actually  
21 need to have the parties in the room with counsel in  
22 order to discuss how does he return to medical school,  
23 when does he enter the residency match, when does he take  
24 step 2, what does the dean's letter say about this  
25 litigation?

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1           And it may be that the parties have agreement  
2 on that. I would certainly hope that we do. But we  
3 don't currently, we have not currently been able to get  
4 agreement on those issues.

5           THE COURT: I mean listen, this is all just  
6 dumped on me right this minute. I'm looking at the  
7 stipulation. It's got three simple provisions. I didn't  
8 know this Pandora's box was going to be opened up. But  
9 suppose that he just goes -- he's got the extra time,  
10 he's got till August 24 to complete and he goes along  
11 with whatever the normal provisions are of attending the  
12 medical school. I mean why does this have to now be part  
13 of an agreement?

14           MS. VARGAS: Well, the problem is we don't  
15 know -- the normal provisions don't apply to him. He  
16 doesn't fit into those normal provisions because he's out  
17 of sequence.

18           THE COURT: Okay. I understand he's out of  
19 sequence but let me -- well, maybe I should just ask  
20 defense counsel. He's out of sequence but that doesn't  
21 mean --

22           MS. LYNCH: Right.

23           THE COURT: It would seem to me he's out of  
24 sequence so what's the answer to this one if he's out of  
25 sequence? What's the answer to that one? I mean even

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1    though he's out of sequence, he still finishes by August  
2    24.  I mean have you had discussions with Ms. Lynch or  
3    somebody from the medical school about this before  
4    suggesting that you go -- you should be able to talk to  
5    each other and resolve it.  I don't know that it needs a  
6    mediation at this point.

7               MS. VARGAS:  Your Honor, I have raised these  
8    issues with the Attorney General's office, and they have  
9    responded that he needs to comply with policy and they've  
10   not, as I understood their position, been willing to have  
11   the more in depth discussions that we need to understand  
12   what Mr. Sampson actually needs to do and when he needs  
13   to do it.

14              THE COURT:  Okay.  But that means -- go ahead.  
15   Okay.  So I understand that Mr. Sampson needs to know and  
16   he doesn't fit into a sequence that's like set in stone  
17   or written in the school guidelines, but you have to  
18   mediate it?  You can't just say -- give me an example of  
19   one of the provisions that's open to question.

20              MS. VARGAS:  Sure.  Mr. Sampson understands  
21   that he need to take step 2 by October of 2023 to  
22   graduate in compliance with the August --

23              THE COURT:  Right.  We all knew that.

24              MS. VARGAS:  But we don't have agreement from  
25   the Attorney General's office from Stony Brook that his

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1 understanding is correct.

2 MS. LYNCH: Your Honor, may I speak? This is  
3 Helena Lynch.

4 THE COURT: Yes, please.

5 MS. LYNCH: Okay, thank you. Well, the only  
6 discussion that I have had on these specific issues was  
7 on our May 3, 2023 conference where plaintiffs raised for  
8 the first time the issue of step 2. I have not had any  
9 other discussions on specific requirements with counsel's  
10 office so I'm not sure what they're referring to. And  
11 the policies and procedures do take into account out of  
12 sequence students.

13 THE COURT: Okay.

14 MS. LYNCH: Again, at the risk of being a  
15 broken record, this is all outside the scope of this  
16 litigation, or most of it is outside the scope of this  
17 litigation.

18 THE COURT: All right. Here's my suggestion.  
19 I understand your position that it's outside the scope of  
20 the litigation and I may agree with you or not. But I  
21 think that the most practical way forward is for both of  
22 you and somebody from the university to talk to each  
23 other, just kind of get the lay of the land about these  
24 provisions to see if there really are disputed issues.  
25 And then I'm happy to talk to you. But I don't want it

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1 like put in my lap like this.

2 So I suggest that you talk to each other. I  
3 mean, you know, here we are also on the verge of him  
4 getting his scores from step 1. That's going to have a  
5 lot to do with what happens going forward.

6 MS. VARGAS: Thank you, your Honor.

7 THE COURT: So here's my suggestion. I think  
8 you should take the next two weeks for Ms. Vargas to lay  
9 out what the exact issues are or questions are about how  
10 he moves forward through the rest of his medical  
11 education. That obviously be affected if he doesn't pass  
12 step 1 but you can at least start talking about them.

13 And in terms of the attorneys fees issue, at  
14 some point I'll give you a briefing schedule on it. But  
15 right now the stipulation was pretty simple. But it  
16 doesn't mean that I don't think Ms. Vargas has some fair  
17 questions about him moving through the medical school. I  
18 think it's fair to get answers. You know, according to  
19 Ms. Lynch, they make -- I guess they anticipate that and  
20 that there aren't really hard questions about how he goes  
21 through and that they have people who are out of  
22 sequence. But I'm really not appreciative of having it  
23 put in my lap when I'm the last person who knows the  
24 intricacies of these issues.

25 So I'm going to advise that you speak to each

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1 other and we talk a week from today. Let's see, we can  
2 talk a week from today at 2 o'clock.

3 MS. VARGAS: Your Honor, Mr. Weiner and I are  
4 both in deposition at that time in the West Coast  
5 deposition.

6 THE COURT: Oh my goodness. Okay. Well, I  
7 guess we could talk Wednesday. What's your deposition  
8 schedule that you're --

9 MS. VARGAS: We're in deposition next week  
10 every day except for Wednesday. Wednesday would work for  
11 me.

12 THE COURT: Ms. Lynch?

13 MS. LYNCH: Yes, Wednesday would work.  
14 Afternoon would be preferable, would work much better.

15 THE COURT: Okay. Why don't we do -- early or  
16 late afternoon? Do you have a preference?

17 MS. LYNCH: I don't, your Honor.

18 MS. VARGAS: Plaintiff has no preference.

19 THE COURT: All right.

20 MR. WEINER: Your Honor, this is Charles  
21 Weiner. My only preference is early afternoon as I'm  
22 speaking at a virtual symposium starting at 3:30.

23 THE COURT: Okay. How's 1 o'clock?

24 MR. WEINER: That's very good.

25 MS. VARGAS: That works for me, your Honor.

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1 MS. LYNCH: (Inaudible).

2 THE COURT: Okay. 1 o'clock next Wednesday.

3 Good luck. Please talk to each other. Thank you.

4 MS. VARGAS: Thank you.

5 MS. LYNCH: Thank you, your Honor.

6 (Matter concluded)

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 9th day of August, 2023.

  
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